
(1992) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3657 of 1990

Swaroop Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 2, 25F
Penal Code, 1860 (IPC) — Section 342, 37

Citation : (1992) 1 WLN 205

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The petitioner was appointed as class IV servant on temporary basis for a period of six months by order dated 1st July, 1987 in the office of the Chief Judicial Magistrate, Jodhpur. The petitioner continued in service even after the expiry of six months and no order of extension or confirmation or of permanent appointment was conveyed to the petitioner. However, the petitioner was conveyed vide Annex. 2 dated 26.10.1989 that his services are expiring on 31.10.1989. Even thereafter, the petitioner's services were not brought to an end and he was allowed to continue. Before communication of "Annex.2 the petitioner was put under suspension on the ground that he was arrested in connection with criminal case in pursuance of F.I.R. No. 17 of 1989 in which he was accused of having committed offence under sections 37 and 342 I.P.C. on 19.8.1989 and was released on 25.8.1989. On that count, the petitioner was put under suspension vide order dated 28.8.1989. Thereafter, the petitioner was conveyed vide communication dated 2.4.1990 that his services were expiring on 31.1.1990 and the same were not extended. The petitioner has challenged the communication Annx.4 dated 2.4.1990. by which his services were sought to be terminated.

2. In the first instance, it was submitted that the order Annx. 4 is not an order of termination simplicitor but it was in fact punitive in nature as it has direct nexus with the alleged criminal proceedings pending against the petitioner. In the alternative, it is submitted that even if the order to be taken as terminating the services simplicitor, the termination order is still invalid as neither notice under Rule 23A of the Rajasthan Service Rules, 1951 was served on the petitioner nor salary in lieu of such notice was paid to the petitioner before terminating his services and, at any rate, the petitioner being in continuous service for a period of more than two years, his services could not have been brought to an end without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947.

3. A return has been filed contesting the claim of the petitioner. It has been stated that the order is not punitive in nature but is an order of termination simplicitor. It has further been stated in the return that the petitioner was serving in temporary capacity as probationer and that in the absence of specific order for confirmation, the petitioner cannot be treated to have been confirmed. Since the period of probation has not been extended and the petitioner was not confirmed, he is not entitled to any notice and his services were automatically terminated on 31.3.1990.

4. Having perused the orders and seen the record made available before the Court, it is apparent that petitioner's appointment vide Annx. 1 was not on probation. Even Annxs. 2 and 4 which are communications informing the petitioner about the date on which the period of his service was expiring does not speak of any probation nor it speaks if the period of probation is not extended or services are being terminated on account of his services having been found unsatisfactory during the period of probation. From the record it also appears that while certain order-sheets have been recorded extending the period from time to time, no such communication was ever made to the petitioner. Annex. 2 only communicates the date on which the period of service expires but does not say that the period was further extended after 31.10.1989. In these state of affairs, the plea that the petitioner was appointed on probation and during the period of probation his services were not found satisfactory and, therefore, the probation was not extended, cannot be accepted.

5. It is true that if the services of the petitioner were to be brought to an end as a result of mis-conduct, the petitioner ought to have been afforded an opportunity of defending before he was punished for the same. But it is admitted case of the respondents that the order Annx. 4 is not punitive. The order also does not speak of its relation with any mis-conduct on the part of the petitioner and therefore, the order Annx. 4 cannot be accepted to be punitive, and therefore, there is no question of holding it invalid being in violation of Article 311 of the Constitution of India.

6. However, the matter does not rest here. It is the common ground between the parties that the petitioner was first appointed on 1st July, 1987 and was

continuing in service upto 31.3.1990. As I have found above, the petitioner was allowed to continue after expiry of six months with effect from the date of his first appointment and no extension order was communicated to the petitioner. The appointment given to the petitioner cannot be termed as fixed term appointment so as to receive the protective umbrella of Section 2(oo)(bb) of the Industrial Disputes Act, 1947. There is no dispute about the fact that neither the notice required u/s 23A of the Rajasthan Service Rules was served on the petitioner, nor one month's salary in lieu of such notice was paid to him nor conditions requisite for a valid retrenchment u/s 25F of the Act of 1947 were followed. It has also been found above, that the appointment of the petitioner was not a fixed term appointment, liable to come to an end on expiry of any fixed date. In view of these circumstances, the order Annx. 4 dated 2.4.1990 cannot be sustained and hereby quashed.

7. The petitioner is, therefore, allowed. The respondents are directed to take the petitioner back in service with all consequential benefits. Since the petitioner was under suspension as on the date his services were put to an end, he will be reinstated with the same status. The respondents shall be free to pass fresh orders in respect of the petitioner as a consequence of criminal proceedings pending against him. The petitioner will also be entitled for subsistence allowance from the date of his termination order until this day. The arrears so accrued may be determined and paid to the petitioner within a period of three months from the date of producing this decision.

No orders as to costs.